

BILL LOCKYER, Attorney General  
of the State of California  
RICHARD D. MARINO, State Bar No. 90471  
Deputy Attorney General  
California Department of Justice  
300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
Telephone: (213) 897-8644  
Facsimile: (213) 897-9395  
E-mail: richard.marino@doj.ca.gov

Attorneys for Complainant

**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation and Petition to  
Revoke Probation Against:

RAFAEL R. NICOLAS, II  
1876 East Woodgate Drive  
West Covina, California 91792

Respiratory Care Practitioner License No. 20078

Respondent.

Case No. R-1873

OAH No. L2005030441

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the  
above-entitled proceedings that the following matters are true:

**PARTIES**

1. Stephanie Nunez (Complainant) is the Executive Officer of the Respiratory  
Care Board of California. She brought this action solely in her official capacity and is represented  
in this matter by Bill Lockyer, Attorney General of the State of California, by Richard D. Marino,  
Deputy Attorney General.

2. Respondent Rafael R. Nicolas, II (Respondent) is represented in this  
proceeding by attorney Sara Caplan, Esq., whose address is CHRISTENSEN, MILLER, FINK,  
JACOBS, GLASER, WEIL & SHAPIRO, LLP, 10250 Constellation Blvd., 19th Floor, Los  
Angeles, CA 90067.

1                   3.       On or about May 4, 1998, the Respiratory Care Board of California issued  
2 Respiratory Care Practitioner License No. 20078 to Rafael R. Nicolas, II (Respondent). The  
3 License was in full force and effect at all times relevant to the charges brought in Accusation and  
4 Petition to Revoke Probation No. R-1873 and will expire on October 31, 2005, unless renewed.

5                                   **JURISDICTION**

6                   4.       On March 10, 2004, Accusation and Petition to Revoke Probation No.  
7 R-1873 was filed before the Respiratory Care Board, Department of Consumer Affairs, State of  
8 California (Board) and is currently pending against Respondent. The Accusation and Petition to  
9 Revoke Probation and all other statutorily required documents were properly served on  
10 Respondent on March 10, 2004. Respondent timely filed his Notice of Defense contesting the  
11 Accusation and Petition to Revoke Probation. A copy of Accusation and Petition to Revoke  
12 Probation No. R-1873 is attached as exhibit A and incorporated herein by reference.

13                                   **ADVISEMENT AND WAIVERS**

14                   5.       Respondent has carefully read, fully discussed with counsel, and  
15 understands the charges and allegations in Accusation and Petition to Revoke Probation No.  
16 R-1873. Respondent has also carefully read, fully discussed with counsel, and understands the  
17 effects of this Stipulated Settlement and Disciplinary Order.

18                   6.       Respondent is fully aware of his legal rights in this matter, including the  
19 right to a hearing on the charges and allegations in the Accusation and Petition to Revoke  
20 Probation; the right to be represented by counsel at his own expense; the right to confront and  
21 cross-examine the witnesses against him; the right to present evidence and to testify on his own  
22 behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the  
23 production of documents; the right to reconsideration and court review of an adverse decision;  
24 and all other rights accorded by the California Administrative Procedure Act and other applicable  
25 laws.

26                   7.       Respondent voluntarily, knowingly, and intelligently waives and gives up  
27 each and every right set forth above.

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CULPABILITY**

8. Respondent does not contest the charges and allegations but for purposes of this Stipulated Settlement, he admits the truth of the charges and allegations in Accusation and Petition to Revoke Probation No. R-1873.

9. Respondent agrees that his Respiratory Care Practitioner License is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

**CONTINGENCY**

10. This stipulation shall be subject to approval by the Respiratory Care Board. Respondent understands and agrees that counsel for Complainant and the staff of the Respiratory Care Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

///  
///  
///  
///

1 **DISCIPLINARY ORDER**

2 **IT IS HEREBY ORDERED** that Respiratory Care Practitioner License No.  
3 20078 issued to Respondent Rafael R. Nicolas, II is revoked. However, the revocation is stayed  
4 and Respondent is placed on probation through and including May 20, 2006,<sup>1</sup> on the following  
5 terms and conditions:

6 1. **Restriction of Practice** Respondent may not be employed or function as  
7 a member of a respiratory care management or supervisory staff during the entire length of  
8 probation.

9 2. **Obey All Laws** Respondent shall obey all laws, whether federal, state, or  
10 local. Respondent shall also obey all regulations governing the practice of respiratory care in  
11 California.

12 Respondent shall notify the Board in writing within 14 days of any incident  
13 resulting in his arrest, or charges filed against, or a citation issued against Respondent.

14 3. **Quarterly Reports** Respondent shall file quarterly reports of compliance  
15 under penalty of perjury, on forms to be provided to the probation monitor assigned by the Board.  
16 Omission or falsification in any manner of any information on these reports shall constitute a  
17 violation of probation and shall result in the filing of an accusation and/or a petition to revoke  
18 probation against Respondent's respiratory care practitioner license.

19 Quarterly report forms will be provided by the Board. Respondent is responsible  
20 for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each  
21 year of probation and the entire length of probation as follows:

22 For the period covering January 1<sup>st</sup> through March 31<sup>st</sup>, reports are to be  
23 completed and submitted between April 1<sup>st</sup> and April 7<sup>th</sup>. For the period covering April 1<sup>st</sup>  
24 through June 30<sup>th</sup>, reports are to be completed and submitted between July 1<sup>st</sup> and July 7<sup>th</sup>. For  
25 the period covering July 1<sup>st</sup> through September 30<sup>th</sup>, reports are to be completed and submitted

26 \_\_\_\_\_  
27 1. On May 21, 2001, Respondent was placed on probation with terms and conditions for  
28 three (3) years. By reason of the pending Accusation and Petition to Revoke Probation, the  
probationary period is automatically extended until there is a final resolution of this matter.

1 between October 1<sup>st</sup> and October 7<sup>th</sup>. For the period covering October 1<sup>st</sup> through December 31<sup>st</sup>,  
2 reports are to be completed and submitted between January 1<sup>st</sup> and January 7<sup>th</sup>.

3 Failure to submit complete and timely reports shall constitute a violation of  
4 probation.

5 4. **Probation Monitoring Program** Respondent shall comply with  
6 requirements of the Board appointed probation monitoring program, and shall, upon reasonable  
7 request, report to or appear to a local venue as directed.

8 Respondent shall claim all certified mail issued by the Board, respond to all notices  
9 of reasonable requests timely, and submit Annual Reports, Identification Update reports or other  
10 reports similar in nature, as requested and directed by the Board or its representative.

11 Respondent is encouraged to contact the Board's Probation Program at any time  
12 he has a question or concern regarding his terms and conditions of probation.

13 Failure to appear for any scheduled meeting or examination, or cooperate with the  
14 requirements of the program, including timely submission of requested information, shall  
15 constitute a violation of probation and will result in the filing of an accusation and/or a petition to  
16 revoke probation against Respondent's respiratory care practitioner license.

17 5. **Probation Monitoring Costs** All costs incurred for probation monitoring  
18 during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as  
19 expenses are reduced or increased. Respondent's failure to comply with all terms and conditions  
20 may also cause this amount to be increased.

21 All payments for costs are to be sent directly to the Respiratory Care Board and  
22 must be received by the date(s) specified. (Periods of tolling will not toll the probation  
23 monitoring costs incurred.)

24 If Respondent is unable to submit costs for any month, he shall be required instead  
25 to submit an explanation of why he is unable to submit the costs, and the date(s) he will be able to  
26 submit the costs including payment amount(s). Supporting documentation and evidence of why  
27 the Respondent is unable to make such payment(s) must accompany this submission.

28 Respondent understands that failure to submit costs timely is a violation of

1 probation and submission of evidence demonstrating financial hardship does not preclude the  
2 Board from pursuing further disciplinary action. However, Respondent understands providing  
3 evidence and supporting documentation of financial hardship may delay further disciplinary action.

4 In addition to any other disciplinary action taken by the Board, an unrestricted  
5 license will not be issued at the end of the probationary period and the respiratory care  
6 practitioner license will not be renewed, until such time all probation monitoring costs have been  
7 paid.

8 The filing of bankruptcy by Respondent shall not relieve the Respondent of his  
9 responsibility to reimburse the Board for costs incurred.

10 6. **Employment Requirement** Respondent shall be employed a minimum of  
11 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of his probation period.

12 Respondent may substitute successful completion of a minimum of thirty (30)  
13 additional continuing education hours, beyond that which is required for license renewal, for each  
14 8 months of employment required. Respondent shall submit proof to the Board of successful  
15 completion of all continuing education requirements. Respondent is responsible for paying all  
16 costs associated with fulfilling this term and condition of probation.

17 7. **Notice to Employer** Respondent shall be required to inform his  
18 employer, and each subsequent employer during the probation period, of the discipline imposed  
19 by this decision by providing his supervisor and director and all subsequent supervisors and  
20 directors with a copy of the decision and order, and the Statement(s) of Issues or Accusation(s) in  
21 this matter prior to the beginning of or returning to employment or within 14 days from each  
22 change in a supervisor or director.

23 If Respondent is employed by or through a registry [and is not restricted from  
24 working for a registry], Respondent shall make each hospital or establishment to which he is sent  
25 aware of the discipline imposed by this decision by providing his direct supervisor and  
26 administrator at each hospital or establishment with a copy of this decision, and the Statement(s)  
27 of Issues or Accusation(s) in this matter prior to the beginning of employment. This must be done  
28 each time there is a change in supervisors or administrators.

1           The employer will then inform the Board, in writing, that he is aware of the  
2 discipline, on forms to be provided to the Respondent. Respondent is responsible for contacting  
3 the Board to obtain additional forms, if needed. All reports completed by the employer must be  
4 submitted from the employer directly to the Board.

5           Respondent shall execute a release authorizing the Board or any of its  
6 representatives to review and obtain copies of all employment records and discuss and inquire of  
7 the probationary status with any of Respondent's supervisors or directors.

8           **8. Supervisor Quarterly Reports** Supervisor Quarterly Reports of  
9 Performance are due for each year of probation and the entire length of probation from each  
10 employer, as follows:

11           For the period covering January 1<sup>st</sup> through March 31<sup>st</sup>, reports are to be  
12 completed and submitted between April 1<sup>st</sup> and April 7<sup>th</sup>. For the period covering April 1<sup>st</sup>  
13 through June 30<sup>th</sup>, reports are to be completed and submitted between July 1<sup>st</sup> and July 7<sup>th</sup>. For  
14 the period covering July 1<sup>st</sup> through September 30<sup>th</sup>, reports are to be completed and submitted  
15 between October 1<sup>st</sup> and October 7<sup>th</sup>. For the period covering October 1<sup>st</sup> through December 31<sup>st</sup>,  
16 reports are to be completed and submitted between January 1<sup>st</sup> and January 7<sup>th</sup>.

17           Respondent is ultimately responsible for ensuring his employer(s) submits complete  
18 and timely reports. Failure to ensure each employer submits complete and timely reports shall  
19 constitute a violation of probation.

20           **9. Changes of Employment or Residence** Respondent shall notify the  
21 Board, and appointed probation monitor, in writing, of any and all changes of employment,  
22 location, and address within 14 days of such change. This includes, but is not limited to, applying  
23 for employment, termination or resignation from employment, change in employment status,  
24 change in supervisors, administrators or directors.

25           Respondent shall also notify his probation monitor AND the Board IN WRITING  
26 of any changes of residence or mailing address within 14 days. P.O. Boxes are accepted for  
27 mailing purposes, however the Respondent must also provide his physical residence address as  
28 well.

1                   10.     **Cost Recovery**   Respondent shall pay to the Board a sum not to exceed  
2 the costs of the investigation and prosecution of this case. That sum shall be \$ **3,937.50** and shall  
3 be paid in full directly to the Board, in equal quarterly payments, within 12 months from the  
4 effective date of this decision. Cost recovery will not be tolled.

5                   If Respondent is unable to submit costs timely, he shall be required instead to  
6 submit an explanation of why he is unable to submit these costs in part or in entirety, and the  
7 date(s) he will be able to submit the costs including payment amount(s). Supporting  
8 documentation and evidence of why the Respondent is unable to make such payment(s) must  
9 accompany this submission.

10                  Respondent understands that failure to submit costs timely is a violation of  
11 probation, and submission of evidence demonstrating financial hardship does not preclude the  
12 Board from pursuing further disciplinary action. However, Respondent understands that  
13 providing evidence and supporting documentation of financial hardship may delay further  
14 disciplinary action.

15                  Consideration to financial hardship will not be given should Respondent violate  
16 this term and condition, unless an unexpected AND unavoidable hardship is established from the  
17 date of this order to the date payment(s) is due.

18                  The filing of bankruptcy by the Respondent shall not relieve the Respondent of his  
19 responsibility to reimburse the Board for these costs.

20                  11.     **Tolling for Out-of-state Residence or Practice**   Periods of residency or  
21 practice outside California, whether the periods of residency or practice are temporary or  
22 permanent, will toll the probation period, but will not toll the cost recovery requirement, nor the  
23 probation monitoring costs incurred. Travel out of California for more than 30 days must be  
24 reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing,  
25 within 14 days, upon his return to California and prior to the commencement of any employment  
26 where representation as a respiratory care practitioner is/was provided.

27                  12.     **Valid License Status**   Respondent shall maintain a current, active and  
28 valid license for the length of the probation period. Failure to pay all fees and meet Continuing



1 Education requirements prior to his license expiration date shall constitute a violation of  
2 probation.

3                   13.     **Violation of Probation** If Respondent violates any term of the probation  
4 in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may  
5 revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke  
6 probation is filed against Respondent during probation, the Board shall have continuing  
7 jurisdiction and the period of probation shall be extended until the matter is final. No petition for  
8 modification of penalty shall be considered while there is an accusation or petition to revoke  
9 probation or other penalty pending against Respondent.

10                   14.     **Completion of Probation** Upon successful completion of probation,  
11 Respondent's license shall be fully restored.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ACCEPTANCE**

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Sara Caplan, Esq. I understand the stipulation and the effect it will have on my Respiratory Care Practitioner License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Respiratory Care Board.

DATED: September 27, 2005

Original signed by:  
RAFAEL R. NICOLAS, II  
Respondent

I have read and fully discussed with Respondent Rafael R. Nicolas II the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: October 14, 2005

Original signed by:  
SARA CAPLAN, Esq.  
Attorney for Respondent

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ENDORSEMENT**

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Respiratory Care Board of the Department of Consumer Affairs.

DATED: October 17, 2005

BILL LOCKYER, Attorney General  
of the State of California

Original signed by:  
ADRIAN K. PANTON  
Deputy Attorney General

Attorneys for Complainant

**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation and Petition to  
Revoke Probation Against:

RAFAEL R. NICOLAS, II  
1876 East Woodgate Drive  
West Covina, CA 91792

Case No. R-1873

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Respiratory Care Board of California, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on January 9, 2006.

It is so ORDERED December 29, 2005.

Original signed by:

LARRY L. RENNER, BS, RRT, RCP, RPFT  
PRESIDENT, RESPIRATORY CARE BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA